



1 ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
2 DANIELLE C. MILLER, ESQ.
Nevada Bar No. 9127
3 BRITTNEY R. GLOVER, ESQ.
Nevada Bar No. 15412
4 **EGLET ADAMS**
400 South 7th Street, 4th Floor
5 Las Vegas, Nevada 89101
Tel.: 702-450-5400
6 Fax: 702-450-5451
eservice@egletlaw.com

7 -and-

8 ANDRÉA L. VIEIRA, ESQ.
Nevada Bar No. 15667
9 **THE VIEIRA FIRM, PLLC**
400 S. 7th St., Ste. 400
10 Las Vegas, Nevada 89101
Telephone: (702) 820-5853
11 Facsimile: (702) 820-5836
Andrea@TheVieiraFirm.com
12 *Attorneys for Plaintiff*

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 MICHELE BROWN, an individual;
16
Plaintiff,
17 vs.

CASE NO.: 2:22-cv-00972-RFB-NJK

PLAINTIFF'S MOTION TO AMEND
COMPLAINT

18 ZELTIQ AESTHETICS, INC., a Delaware
Corporation; ORANGE TWIST LLC, a Nevada
19 Limited Liability Company; DOES 1 through
20 10, inclusive; ROE CORPORATIONS 11
through 20, inclusive; and ABC LIMITED
21 LIABILITY COMPANIES 21 through 30,
22 inclusive,
23 Defendants.

24 **PLAINTIFF'S MOTION TO AMEND COMPLAINT**

25 Plaintiff, MICHELE BROWN ("Plaintiff"), by and through her counsel of record, Robert
26 T. Eglet, Esq., Danielle C. Miller, Esq., and Brittney R. Glover, Esq. of EGLET ADAMS and
27 Andréa L. Vieira, Esq., of THE VIEIRA FIRM hereby respectfully submits this motion for leave
28 to amend her First Amended Complaint ("Complaint"). This motion is based on the papers and

pleadings on file the Memorandum of Points and Authorities below, the attached Second Amended Complaint, and any oral argument the Court may hear. In compliance with LR 15-1, a copy of the proposed Second Amended Complaint is attached as *Exhibit 1*.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND AND PROCEDURAL HISTORY

This is a products liability action that was removed from the Eighth Judicial District Court.¹ Recently, counsel for Defendant ORANGE TWIST, LLC (“Orange Twist”) contacted Plaintiff’s counsel and identified a party who Defendant contends is the “correct entity that provided services to [Plaintiff].”² Since that date, Plaintiff’s counsel has attempted to obtain additional information on this potential Defendant, Illuminate Medical Orna Fisher M.D., PC.³ To date, no additional information has been provided.

This court ordered Orange Twist to file a Certificate of Interested Parties that lists the name and citizenship of each member/owner.⁴ Orange Twist filed an Amended Certificate of Interested parties⁵ and a Second Amended Certificate of Interested Parties.⁶ However, none of these documents mention Illuminate Medical Orna Fisher M.D., PC.

Upon further research, a press release dated September 26, 2016 states that Dr. Orna Fisher joined Illuminate, the predecessor to Orange Twist, as the Chief Wellness Officer.⁷ As alleged in the First Amended Complaint, Orange Twist merged with Illuminate Face & Body Bar on or about April 30, 2019, resulting in all Illuminate Face & Body Bar locations being fully branded as OrangeTwist locations on or about July 2019.⁸ Upon information and belief, when Plaintiff treated at Orange Twist, it was still operating as Illuminate Face & Body Bar.

¹ ECF No. 1.

² See email from Linda K. Rurangirwa, dated April 26, 2023, *Exhibit 2*.

³ See Declaration of Andréa L. Vieira, Esq. in Support of Plaintiff’s Motion to Amend Complaint.

⁴ ECF No. 50.

⁵ ECF No. 52.

⁶ ECF No. 55.

⁷ See *Exhibit 3*, retrieved from <https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar-as-chief-wellness-officer-14845957>

⁸ ECF No. 1, 10:17-20.

1 As of the date of filing this motion, on Orange Twist’s website under “Meet Our Medical
2 Team” Orna Fisher is listed and the bio states “Illuminate Medical Orna Fisher M.D., PC, Las
3 Vegas Office and Body Concepts by OrangeTwist 1 Corp.”⁹, as follows:

4 Thereafter, in August 2023, Plaintiff learned that Natalie Guier and Michelle Tio-Nguyen



las vegas + santa clara
DR. ORNA FISHER

Dr. Orna Fisher is double board-certified
Diplomat, American Board of Plastic Surgery
and Diplomat, American Board of Surgery
specializing in cosmetic surgery. In addition
to her surgical artistry, Dr. Fisher is a certified
integrative nutrition health coach. This
combined experience fuels her passion for
beauty and wellness, and Dr. Fisher has
become an expert in both skincare and non-
surgical aesthetic rejuvenation treatments.
Illuminate Medical Orna Fisher M.D., PC, Las
Vegas Office and Body Concepts by
OrangeTwist 1 Corp.

21 provided services to Plaintiff while employed and/or contracted with Orange Twist and/or
22 Illuminate Medical Orna Fisher M.D., PC. Further, Plaintiff learned that Orange Twist and
23 Illuminate Medical Orna Fisher M.D., PC were in a contractual agreement to provide aesthetic
24 treatments to the public.

25 Orange Twist and Illuminate Medical Orna Fisher M.D., PC entered into a management
26 agreement encompassing, among other things: hiring, training, supervision, and practice
27

28 ⁹ See *Exhibit 4*, retrieved from <https://orangetwist.com/our-medical-team/>.

management. Orange Twist and Illuminate Medical Orna Fisher M.D., PC jointly and/or through their partnership leased and operated the CoolSculpting equipment used by Natalie Guier and Michelle Tio-Nguyen on Plaintiff.

Therefore, Plaintiff believes that Illuminate Medical Orna Fisher M.D., PC, Natalie Guier, and Michelle Tio-Nguyen should be a defendants in this case and hereby respectfully seeks leave to amend its complaint to add said defendants.

II. LAW AND ARGUMENT

Under FRCP 15, a party may amend its complaint only by leave of the court after responsive pleadings have been filed and in the absence of the adverse party's written consent.¹⁰ Courts have discretion to grant leave and should freely do so "when justice so requires."¹¹

There is a strong public policy in favor of permitting amendment.¹² The Ninth Circuit has made clear that Rule 15(a) is to be applied with "*extreme liberality*."¹³ Leave to amend should be denied as futile "only if no set of facts can be proven under the amendment to the pleadings that would constitute a valid and sufficient claim." *Barahona v. Union Pac. R.R.*, 881 F.3d 1122, 1134 (9th Cir. 2018).

Courts limit denials of leave to amend where: (1) it will cause undue delay; (2) it will cause undue prejudice to the opposing party; (3) the request is made in bad faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the amendment would be futile.¹⁴ These factors do not carry equal weight, however, with prejudice being the most significant factor.¹⁵ The party opposing the amendment bears the burden of showing why leave should be denied.¹⁶ Each factor is addressed below:

1. No Undue Delay

An Order for Enlargement of Time to Complete Discovery was entered in this matter on

¹⁰ *Thornton v. McClatchy Newspapers, Inc.*, 261 F.3d 789, 799 (9th Cir. 2001).

¹¹ *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)).

¹² *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).

¹³ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (emphasis added).

¹⁴ *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). *Simon Design Eng'g v. W & W Steel*, No. 2:08-cv-01291-RLH-PAL, 2009 U.S. Dist. LEXIS 153044, at *4 (D. Nev. Feb. 2, 2010).

¹⁵ *Id.*

¹⁶ *Llavata v. Morrow*, 2012 WL 789130, at *1 (D. Nev. Oct. 22, 2012). *Behrends v. Taggart*, No. 2:20-cv-00571-GMN-NJK, 2021 U.S. Dist. LEXIS 6468, at *2 (D. Nev. Jan. 12, 2021).

1 July 12, 2023, which set the deadline for filing a motion to amend pleadings or add parties to
2 October 30, 2023.¹⁷ Therefore, this motion is timely.

3 There will be no delay caused by Plaintiff's amendment because litigation has only recently
4 commenced in this matter due to several delays not caused by Plaintiff. The parties attended
5 mediation on August 28, 2023 at Orange Twist's expense due to an Order entered by this Court.¹⁸
6 On September 1, 2023, Defendant Zeltiq sent letters to Natalie Guier and Michelle Tio-Nguyen
7 for their depositions.¹⁹

8 2. No Prejudice to the Opposing Parties

9 There will be no prejudice to Defendants. First, Orange Twist already possesses
10 information regarding potential liability for these defendants, since it was Orange Twist's counsel
11 that contacted Plaintiff's counsel identifying Illuminate Medical Orna Fisher M.D., PC as a
12 potential defendant. Further, it was Orange Twist that provided information regarding the
13 relationship between the defendants.

14 Second, the addition of these defendants does not impact Zeltiq since Zeltiq is a wholly
15 separate entity from Orange Twist.

16 Third, as no depositions have taken place in this matter, these defendants whose identity
17 and role were exclusively known to Orange Twist until this time can be added to this litigation
18 without any impact on discovery. Zeltiq has already reached out to Natalie Guier and Michelle
19 Tio-Nguyen for their depositions, and the parties will have ample time and opportunity to conduct
20 necessary discovery.

21 3. Request Is Not Made in Bad Faith

22 This request is not made in bad faith because it is based on information provided by
23 Orange Twist's counsel and subsequently learned in August 2023. This motion was brought after
24 independent research that confirmed the proposed defendants' involvement during the time that
25 Plaintiff received the Coolsculpting treatment implicates said defendants.

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27 ¹⁷ ECF No. 76.

28 ¹⁸ ECF No. 72.

¹⁹ See Letters, dated September 1, 2023, attached hereto as *Exhibit 5*.

1 4. There Have Been No Deficiencies for Plaintiff to Cure

2 There have been no deficiencies for Plaintiff to cure therefore factor number four does not
3 apply in this matter.

4 5. This Amendment is Not Futile

5 “[A] proposed amendment is futile only if no set of facts can be proved under the
6 amendment to the pleadings that would constitute a valid and sufficient claim or defense.”²⁰
7 Plaintiff’s amendment is not futile because Orange Twist identified Illuminate Medical Orna
8 Fisher M.D., PC as the “correct entity that provided services to [Plaintiff].” Therefore, based
9 Plaintiff has valid claims against this entity.

10 **III. CONCLUSION**

11 Based on the foregoing, good cause exists to allow Plaintiff to amend her Complaint and
12 Plaintiff respectfully requests that this Court grant Plaintiff’s Motion to Amend Complaint.

13 Dated this 18th day of September, 2023.

14 **Eglet Adams**

15
16 By: /s/ Danielle C. Miller, Esq.
17 ROBERT T. EGLET, ESQ.
18 Nevada Bar No. 3402
19 DANIELLE C. MILLER, ESQ.
20 Nevada Bar No. 9127
21 BRITTNEY R. GLOVER, ESQ.
22 Nevada Bar No. 15412
23 400 South Seventh Street, Suite 400
24 Las Vegas, Nevada 89101
25 *Attorneys for Plaintiff*
26
27
28

²⁰ *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)

CERTIFICATE OF SERVICE

Pursuant to FRCP 5 and LR IC 1-1, I hereby certify that I am an employee of EGLET ADAMS and on September 18, 2023, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO AMEND COMPLAINT** on the all parties registered for e-service in the service list of this matter on the Court's electronic filing system, or if the document is one that will not be filed electronically pursuant to LR IC 1-1(c), via U.S. Mail postage fully prepaid, addressed to each party as follows:

Robert McCoy, Esq.
Nevada Bar No. 9121
Sihomara L. Graves, Esq.
Nevada Bar No. 13239
KAEMPFER CROWELL
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
rmccoy@kcnvlaw.com
sgraves@kcnvlaw.com
Attorneys for Defendant
Zeltiq Aesthetics, Inc.

Patricia Egan Daehnke, Esq.
Nevada Bar No. 4976
Linda K. Rurangirwa, Esq.
Nevada Bar No. 9172
COLLINSON, DAEHNKE, INLOW &
GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, Nevada 89119
Patricia.Daehnke@cdiglaw.com
Linda.Rurangirwa@cdig.law.com
Attorneys for Defendant
Orange Twist, LLC

Alyson Bustamante Jones, Esq. (*pro hac vice*)
BUTLER SNOW LLP
1020 Highland Colony Pkwy., Suite 1400
Ridgeland, Mississippi 39157
alyson.jones@butlersnow.com
Attorneys for Defendant
Zeltiq Aesthetics, Inc.

/s/ Bianca Marx
An Employee of EGLET ADAMS

EGLET ADAMS

**DECLARATION OF ANDRÉA L. VIEIRA, ESQ IN SUPPORT OF MOTION TO
AMEND COMPLAINT**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Andréa L. Vieira, Esq., having been first duly sworn on oath and under penalty of perjury, state as follows:

1. I am a resident of Clark County, Nevada over the age of 18 years old and have personal knowledge of the facts and circumstances referenced herein and I am prepared to testify under oath thereto.

2. I am one of the counsel for Plaintiff MICHELE BROWN.

3. On April 26, 2023, I received an email from Linda K. Rurangirwa, Esq., counsel for Orange Twist that stated in part, “I have been informed that the correct entity that provided services to your client should be Illuminate Medical Orna Fischer PC.” I hereby certify that a true and correct copy of the email exchange is attached hereto as *Exhibit 2*.

4. On May 2, 2023, I replied to Ms. Rurangirwa and requested additional information.

5. On the same date, I received a response from Patricia Daehnke, Esq., also counsel for Orange Twist, who stated that she would be speaking with general counsel the following day and would get me “all relevant information shortly thereafter.”

6. On May 10, 2023, I followed up with counsel regarding this issue. No response was received, and I followed up again on May 17, 2023.

7. On May 19, 2023, I received another email from Ms. Rurangirwa who stated that she was getting “further clarification from corporate counsel.”

8. To date, no additional information has been provided.

9. I conducted independent research to ascertain Illuminate Medical Orna Fischer PC’s relationship to Orange Twist.

10. Attached hereto as *Exhibit 3* is a true and correct copy of Orange Twist’s webpage I retrieved from <https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar->

EGLET ADAMS

1 [as-chief-wellness-officer-14845957](#) on July 31, 2023.

2 11. Attached hereto as **Exhibit 4** is a true and correct copy of Orange Twist's webpage
3 I retrieved from <https://orangetwist.com/our-medical-team/>

4 12. I attended the mediation in this matter on August 28, 2023 along with co-counsel,
5 Eglet Adams.

6 13. Following the mediation, counsel for Zeltiq sent letters to Michelle Tio-Nguyen
7 and Natalie Guier stating that they would like to take said persons' depositions regarding the care
8 and treatment provided to Plaintiff while they were employed at while employed at Orange Twist
9 and/or Illuminate Face & Body Bar. A true and correct copy of said letters is attached hereto as
10 **Exhibit 5.**

11 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
12 is true and correct.

13 Dated this 18th day of September, 2023.

14
15 /s/ Andréa L. Vieira
16 ANDRÉA L. VIEIRA, ESQ.
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Index of Exhibits

Brown v. Zeltiq Aesthetics, Inc., et al
(U.S. District Court Case No. Case No. 2:22-cv-00972-RFB-NJK)

NO.	DOCUMENT
Exhibit	Description
1.	Plaintiff's Proposed Second Amended Complaint.
2.	Email from Linda K. Rurangirwa, Esq., counsel for Orange Twist, dated April 26, 2023.
3.	A true and correct copy of Orange Twist's webpage I retrieved from https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar-as-chief-wellness-officer-14845957
4.	A true and correct copy of Orange Twist's webpage I retrieved from https://orangetwist.com/our-medical-team/
5.	Letters to Michelle Tio-Nguyen and Natalie Guier.